



California Fair Political Practices Commission

May 10, 1989

Peter D. Bulens
City Attorney
City of Mountain View
444 Castro Street
P. O. Box 7540
Mountain View, CA 94039

Re: Your Request for Advice
Our File No. A-89-215

Dear Mr. Bulens:

This is in response to your request for advice regarding the applicability of the mass mailing prohibition of Section 89001 of the Political Reform Act (the "Act")¹ to the City of Mountain View's newsletter, The View.

QUESTION

May the names of elected councilmembers appear in a city newsletter other than on the "masthead" of the publication? For example, if the newsletter does not highlight councilmembers' names, nor run articles which are about a particular councilmember, nor print any pictures of councilmembers, may reference to individual councilmembers be made in articles included in the newsletter?

CONCLUSION

The names of councilmembers may appear in a city publication in locations other than the "masthead." Specifically, the names of councilmembers may appear in articles in the city newsletter if the councilmembers are not "featured" in the publication and the councilmembers do not exercise editorial control over the publication.

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

FACTS

In 1977 the City of Mountain View formed a corporation called the Mountain View Citizens Newsletter, Inc. whose purpose is to publish a city newsletter called The View. This publication contains information concerning events taking place within the city. The newsletter is mailed directly by the corporation to all residences in the city. The board of directors of the corporation is composed exclusively of the elected councilmembers of the City of Mountain View. The corporation is funded through the city.

The corporation engages the services of one contract employee as editor of the newsletter. The city council has a policy of not interfering with the editorial content of the newsletter. The editor has substantial and independent control over the contents of the newsletter. While fiscal responsibility rests with the city council, editorial discretion is vested in the editor.

Since passage of Proposition 73, which included the mass mailing prohibition, the corporation has published the newsletter without mentioning the names of councilmembers. Although an article in the newsletter may state that an action was taken by the city council on a 4-3 vote, the names of councilmembers voting for or against a proposition are not mentioned.

As the city attorney for the City of Mountain View, you have expressed your concern regarding the applicability of the mass mailing prohibition to the city newsletter. If the mass mailing prohibition prevents mention of the position taken by councilmembers on different issues, the newsletter's effectiveness as an informational publication for the citizens of Mountain View is greatly decreased.

ANALYSIS

Section 89001 prohibits mass mailings sent at public expense. A "mass mailing" consists of over two hundred substantially similar pieces of mail. (Section 82041.5.)² A mass mailing is "sent at public expense" if any of the cost of design, production, printing or distribution, is paid for with public moneys. (Regulation 18901(a), copy enclosed.) For purposes of Section 89001, the city newsletter constitutes a mass mailing sent at public expense because the cost of design, production, printing and distribution is paid for with public moneys.

Mass mailings are prohibited within the meaning of Section 89001 if:

² We assume for purposes of our analysis that the newsletter is distributed to more than 200 persons in any one month.

(1) The name of the elected officer or his or her photograph appears on the document; and

(A) The elected officer exercises direction or control over the content, production, or distribution of the document, or

(B) The document is sent at the request or suggestion of the elected officer or his or her agent; or

(C) The document is signed by, or is designated as being from, the elected officer or her office; or

(2) (A) The elected officer is affiliated with the agency which produces or distributes the document; and

(i) The elected officer is featured in the document; or

(ii) The name, office or other reference to the elected officer or his or her photograph appears on the document and the document is prepared or sent in cooperation, consultation, coordination or concert with the elected officer.

(B) An elected officer is "featured" in a mass mailing if he or she is singled out for attention of the reader by use of his or her signature, inclusion in any photograph, or the manner of display of his or her name or office in the layout of the document such as by headlines, type size or typeface.

(C) An elected officer is "affiliated with an agency" if he or she is a member, officer, or employee of the agency or a subunit such as a committee, or has supervisory control over the agency, or appoints one or more members of the agency.

Regulation 18901(c)

Councilmembers of the City of Mountain View are "affiliated" with the corporation which produces the newsletter. Therefore they may not be "featured" in The View by use of their signature, photographs, or the manner of display of their names or offices in the layout of the newsletter such as by headlines, type size or typeface. (Regulation 18901(c)(2)(B).)

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You have stated in your letter that councilmembers at times suggest articles for inclusion in The View. If the newsletter is prepared or sent in cooperation, consultation, coordination or concert with a councilmember, the newsletter may not include his or her name, office, or make any other reference to the councilmember. (Regulation 18901(c)(2)(A)(ii).) Review of the newsletter by the councilmember would be sufficient for the newsletter to have been "prepared or sent in cooperation, consultation, coordination or concert" with the councilmember. (Whelihan Advice Letter, No. I-89-063, copy enclosed.) Under these circumstances, the letter may not contain any reference to the councilmember.

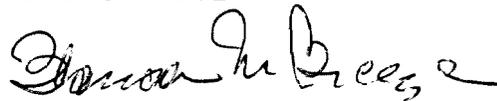
Conversely, if the newsletter is not prepared or sent in cooperation, consultation, coordination, or concert with the councilmembers, their names or offices may be mentioned provided the newsletter does not "feature" the councilmembers. (Regulation 18901(c)(2)(A)(i).)

In brief, if councilmembers do not exercise any editorial control over publication of The View, the newsletter may include the names of councilmembers in the text of published articles. However, councilmembers may not be featured in the publication. Examples of when the Commission considers a public official to be "featured" in a publication include: placing his or her name in headlines, inclusion of his or her photograph, or by inclusion of an article which is signed by the official.

I trust this information is an adequate response to your inquiry. Should you have any further questions, do not hesitate to call me at (916)322-5901.

Sincerely,

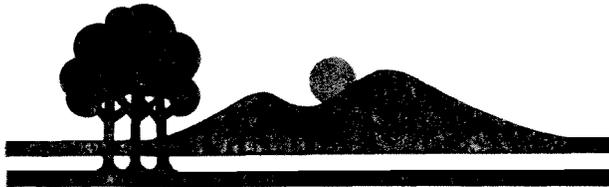
Kathryn E. Donovan
General Counsel



By: Blanca M. Breeze
Counsel, Legal Division

KED:BMB:plh

Enclosures



CITY OF MOUNTAIN VIEW

City Attorney
(415) 966-6303

444 Castro Street
P.O. Box 7540
Mountain View, CA 94039

April 6, 1989

Diane Griffiths, General Counsel
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

APR 11 7 49 AM '89

Dear Ms. Griffiths:

Recently I had occasion to read a publication by the FPPC concerning the use of Councilmembers' names in a newsletter, both at the masthead and within various articles within the newsletter itself. My office thereafter spoke with several of your deputies who were unable to clearly advise that Councilmembers' names could be used in a publication the City of Mountain View sponsors but who also suggested that you might be able to more definitively answer my inquiry if it were requested in writing, with a more complete delineation of the facts applicable to the City of Mountain View. This letter is in response to that suggestion.

In 1977 the City of Mountain View formed a corporation called the Mountain View Citizens Newsletter, Inc. whose purpose was to publish a newsletter (called THE VIEW) which primarily contained information concerning the happenings within the City. The newsletter was mailed directly by the corporation to all residences in the City. The Board of Directors of the corporation was and is the currently elected City Council of the City of Mountain View. Enclosed for your information are two copies of THE VIEW, one published before the passage of Proposition 73 and one after.

Funds for the corporation come exclusively from the City, and there is one contract "employee"--the editor. The City Council has a policy that it will not interfere in any way with the editorial content of THE VIEW, and in fact, the editor has substantial and independent control over the content of THE VIEW. This does not mean that Councilmembers do not, from time to time, suggest articles of interest for the newsletter or that the editor does not, on the whole, run these articles with many others on varying subjects. The content of all articles is, however, within the full discretion of the editor, and if space does not permit, a suggested article is not run.

Diane Griffiths, General Counsel
April 6, 1989
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Since the passage of Proposition 73, the corporation has been forced to publish the newsletter without mentioning the names of any Councilmembers. This frequently makes for very stilted reading. An article may say that an action was taken by the City Council on a 4-3 vote, but then cannot mention which Councilmembers voted for a proposition and which voted against it. Newsworthy articles are also now written in a fashion intentionally designed not to inform the public about positions or opinions which various Councilmembers take. This is, obviously, not anywhere near the goal of the corporation to inform the citizens of Mountain View concerning important issues within the community.

Recently, new regulations interpreting the meaning of Proposition 73 have been promulgated by the FPPC, and this letter is a formal request for your opinion on their application to the publication of THE VIEW. If the newsletter does not highlight Councilmember names, nor run articles which are about a particular Councilmember, nor print any pictures of Councilmembers, is it possible to at least mention Councilmembers by name in articles in the newsletter?

I believe that the answer to this question lies within your interpretation of the word "feature" and an examination of the control which the City Council exercises over THE VIEW. The editor informs me that she has no intention, and will not publish any article whose primary focus is on a particular Councilmember, so the more obvious meaning of "feature" is eliminated. However, in conversations with your staff it was felt that this word may have a far broader meaning attached to it than is plainly obvious. As to the control which the City Council exercises over THE VIEW, it is plain that fiscal responsibility rests with the City Council, but that editorial discretion is vested in the editor. In all the years that The View has been in publication, this policy has never been breached.

Your opinion on the appropriateness of including Councilmembers' names in the publication (other than on the masthead) would be appreciated. If I can be of any further help, or you need additional information, please do not hesitate to call or write me at your earliest convenience.

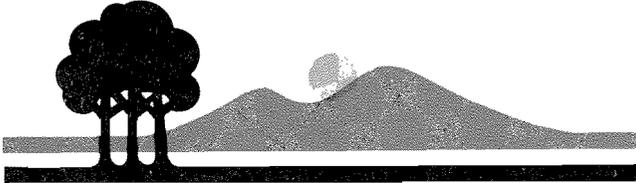
Yours truly,



Peter D. Bulens,
City Attorney

cc: Mayor, City Council, CM (Acting), Kate Wakerley, Editor

CITY OF MOUNTAIN VIEW



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(415) 966-6303

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Yours truly,



Peter D. Bulens,
City Attorney

cc: Mayor, City Council, CM (Acting), Kate Wakerley, Editor



California Fair Political Practices Commission

April 14, 1989

Peter D. Bulens
City Attorney
P.O. Box 7540
Mountain View, CA 94039

Re: Letter No. 89-215

Dear Mr. Bulens:

Your letter requesting advice under the Political Reform Act was received on April 11, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Blanca Breeze an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh